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September 21, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 22, 2004

Case Number: TSO-0141

This decision concerns the eligibility of XXXXXXXXXXXX (the individual) to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The Department of Energy (DOE) local security office suspended the Individual's access authorization under the provisions of Part 710. This decision considers whether the Individual's access authorization should be restored. For the reasons stated below, the Individual's access authorization should be restored.

I. BACKGROUND

The present case concerns an Individual whom a DOE consultant psychiatrist (the DOE psychiatrist) has diagnosed with Alcohol Abuse. DOE Exhibit (Ex.) 3. At the hearing, the DOE psychiatrist initially reiterated his opinion, and the individual's treatment counselor stated her opinion that the individual does not meet the diagnostic criteria for alcohol abuse. On the basis of the testimony he heard at the hearing, however, the DOE psychiatrist determined that the individual is now reformed and rehabilitated from alcohol abuse. In light of the evidence presented in this proceeding, I have reached the conclusion that the DOE's security concerns regarding this individual have been mitigated and his access authorization should be restored.

The events leading to this proceeding began when DOE officials received information indicating that the Individual had been arrested in November 2002 for Driving While Intoxicated (DWI) for a third time. On February 18, 2003, a representative of the local security office conducted a personnel security interview (PSI) of the Individual. A transcript of this PSI appears in the record of this proceeding as DOE Ex. 8. The Individual was then asked to submit to an examination by the DOE psychiatrist. On September 18, 2003, the DOE psychiatrist conducted a forensic psychiatric examination of the Individual. On September 19, 2003, the DOE psychiatrist issued a report in which he stated that the Individual meets the criteria for Alcohol

Abuse, without adequate evidence of rehabilitation or reformation. DOE Ex. 3 (Psychiatrist's Report of Examination) at 8.

After receipt of the DOE psychiatrist's report, the local security office initiated an administrative review proceeding. *See* 10 C.F.R. § 710.9. The local security office then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). DOE Ex. 1. The Notification Letter alleges that the Individual has "been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as . . . suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

The Individual filed a request for a hearing in which he responded to the specific allegations contained in the Notification Letter. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the local security office presented one witness, the DOE psychiatrist. The Individual presented three witnesses: his supervisor, a friend and a licensed substance abuse and mental health counselor (the counselor). The Individual also testified on his own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF FACT AND ANALYSIS

A reliable diagnosis of alcohol abuse raises significant security concerns under Criterion J. In the present case, a board-certified psychiatrist examined the individual and presented a well reasoned evaluative report that supports his diagnosis that the individual suffers from alcohol abuse. In light of this diagnosis and the fact that two earlier DWI arrests preceded the 2002 DWI arrest, the local office properly invoked this criterion.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in determining whether an individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c).

The individual testified at the hearing concerning his earlier DWI arrests. He testified that prior to the November 2002 DWI, his next most recent arrest for DWI was in November 1970, though the arrest was no longer on his record. Transcript of Hearing in Case No. TSO-0141 (Tr.) at 34. As for the earliest DWI arrest, in 1968, he stated that he had no recollection of the event. *Id.* However, when shown that he had reported the arrest on a form he had submitted to the local security office in 1968, he conceded that the arrest must have occurred; he merely reiterated that he no longer recalled it. *Id.* at 35; DOE Ex. 9. He also testified about his involvement with alcohol since the DOE psychiatrist evaluated him in September 2003. He stopped drinking shortly after his interview with the DOE psychiatrist. Tr. at 47. He had not yet been ordered by the court to abstain from alcohol as a result of the 2002 DWI arrest, but after the psychiatric interview, "it became evident to me that I should stop." *Id.* All the evidence in this proceeding indicates that the individual has maintained his abstinence since September 2003. In March 2004 the court ordered the individual to abstain from all alcohol for one year, attend 24 hours of group alcohol counseling, perform community service and meet other imposed requirements. *Id.* at 36-39. After completing the required 24 hours of counseling, the individual has continued attending counseling sessions voluntarily for an additional 25 hours as of the date of the hearing, including one session the evening before the hearing. *Id.* at 39-40; Individual's Ex. A. The individual testified that he intends to abstain from alcohol in the future and to continue counseling until he and his counselor decide that it is no longer needed. Tr. at 40-42. When the DOE Counsel questioned whether the individual believes he has a problem with alcohol, the individual responded:

A. No, I don't.

Q: And why do you say that?

A. Well, because I've been abstaining. I've been attending the sessions.

Q: And you don't believe that [the DOE psychiatrist's] diagnosis is correct?

A: I disagree with it.

Id. at 41. Therefore, at the time of the hearing, the individual had abstained from alcohol completely for 15 months, had attended alcohol counseling for nine months and, in his opinion, did not have a problem with alcohol.

The counselor testified at the hearing on behalf of the individual. She explained that, in light of the individual's 2002 DWI conviction and his two preceding DWI arrests, she had to label him with "alcohol abuse" on his intake form. *Id.* at 63. Nevertheless, she remained adamant that the individual was not an "alcoholic" nor, in her estimation, did he meet the criteria for a diagnosis of alcohol abuse, as defined in the Diagnostic and Statistical Manual. *Id.* at 63, 69. The counselor conducts the sessions that the individual attends, and noted his personal growth in terms of healthy living habits and interpersonal skills, including understanding alcohol's adverse effects on the body and the benefits of discussing alcohol-related problems with others. *Id.* at 66-68. She testified that she counsels all of her clients, including the individual, to abstain from alcohol. Regarding the individual, however, she "honestly [does] not believe that he has any real risky problem with alcohol." *Id.* at 70. She feels that it is not possible to reach a diagnosis on the basis of one visit, as the DOE psychiatrist did in this case. *Id.* at 69. Regarding the individual's commitment to remain sober, she stated, "I think he's more committed to his physical health at this point. So I think . . . his statement that he does not intend to drink again is not a reflection of his feeling that he has a problem with alcohol, but just that he's committed to . . . being in good health." *Id.* at 70-71. The counselor stated that she is not concerned with the individual's belief that he does not have a problem with alcohol. *Id.* at 71. Finally, she testified that participation in Alcoholics Anonymous would not be appropriate for the individual, but that he is capable of maintaining abstinence on his own at this point. *Id.* at 76.

The DOE psychiatrist testified at the hearing after he had heard the testimony of the individual and his counselor. He stated that he had diagnosed the individual as suffering from alcohol abuse in September 2003: "I felt that he met the criteria for alcohol abuse when I saw him, granted kind of a mild case compared to what I often see." *Id.* at 82. One of the criteria for alcohol abuse set forth in the Diagnostic and Statistical Manual, Fourth Edition Revised, a guidebook widely used by psychiatrists, requires that the individual has faced more than one alcohol-related legal problem within a year. The DOE psychiatrist acknowledged that the individual's behavior did not technically meet that criterion, because the individual's three DWI arrests took place in 1968, 1970, and 2002. *Id.* at 116-17. He did, however, weigh the individual's 2002 DWI heavily in making his diagnosis: it had occurred within one year of the evaluation (after a year in which no criteria are met, a diagnosis of abuse expires); it was his second DWI arrest since he had held an access authorization (after his first, he was aware of the serious impact another DWI arrest would have on his access authorization and his job); he believed the individual had consistently understated the amount he drank before the arrest; and the individual's liver enzyme test results indicated liver damage commonly caused by drinking alcohol to excess. *Id.* at 83-88. The DOE psychiatrist stated that at the time that he had examined the Individual and prepared his report, the individual was still using alcohol and was not participating in any form of treatment or counseling. *Id.* at 100. In his report, his recommendation for rehabilitation and reformation was one year of outpatient treatment and one year of abstinence. *Id.* at 105.

The DOE psychiatrist was then asked his opinion of the individual's alcohol problem in light of the testimony he had heard during the hearing. In the individual's favor, he mentioned that the

individual had been abstinent for an extensive period and is participating seriously in a treatment program. As concerns, he listed a number of observations. First, the individual could not name a fixed date on which he took his last drink. The DOE psychiatrist stated that, while not terribly significant, knowing the date one took his last drink is an indicator to the psychiatrist that a person had made a serious commitment to stop drinking. *Id.* at 106-07. Second, he did not start treatment on his own, even after reading the DOE psychiatrist's report. Instead, he began treatment when the court ordered him to do so; thus the treatment was externally rather than internally motivated. He conceded, however, that treatment results are roughly equal, regardless of how the treatment was initiated. *Id.* at 107-09. The final concern worthy of note was that he was unsure that the individual had maintained his sobriety as well as he claimed. The testimony of his supervisor and his friend accounted for his workdays and his social contacts during the week. *Id.* at 18-19; 26. In addition, the counselor testified that the individual was tested for alcohol before each session he attended. *Id.* at 126.* After considering all the information he had heard, and giving particular weight to the counselor's opinion concerning the individual's progress in treatment, the DOE psychiatrist concluded that, in his opinion, there was adequate evidence of rehabilitation and reformation. *Id.* at 131-32.

I agree with the DOE psychiatrist's opinion. The individual was arrested three times for DWI, twice in the distant past and once relatively recently. The DOE psychiatrist diagnosed the individual as suffering from a mild form of alcohol abuse in September 2003. An alcohol abuse counselor expressed her opinion that in March 2004 the individual did not meet the diagnostic criteria for alcohol abuse. I am inclined to treat as correct the DOE psychiatrist's more conservative position under the circumstances of this case, which include the individual's denial that he has an alcohol problem. I therefore find that the individual suffered from alcohol abuse at the time of his psychiatric evaluation in September 2003, which raises substantial security concerns. The evidence in the record shows, however, that the individual has not had another alcohol-related problem of any sort since September 2003, he has maintained his abstinence since then, he has actively participated in counseling, both court-ordered and voluntary, and he impressed me as being seriously committed to both abstinence and counseling. The evidence in the record convinces me that the individual is at low risk of relapsing into alcohol-abusive behavior. Accordingly, I find that the individual has successfully resolved the security concerns raised by his alcohol abuse.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criterion J. Therefore, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the Individual's access authorization should be restored. The local

* To support his assertion of abstinence, the individual was permitted to supplement the record with an affidavit from his wife, regarding his drinking habits at home. In this affidavit, which was received into the record on January 31, 2005, the individual's wife swears that the individual has consumed no alcohol in their home since September 2003.

security office may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: September 21, 2005